



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3501 FAX (603) 271-6683



Seymour Howes
P.O. Box 687
New Hampton, NH 03256

Re: Season's Pass Restaurant
Expansion of Use

ADMINISTRATIVE ORDER
No. WD 2001-06

April 17, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Seymour Howes pursuant to RSA 485-A:42. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Seymour Howes is an individual having a mailing address of P.O Box 687, New Hampton, NH 03256.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual subsurface sewage disposal systems ("septic systems") thereon. Pursuant to rulemaking authority conferred thereby, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. RSA 485-A:29 and Env-Ws 1003 require any person intending to construct a structure from which wastewater will be discharged to first submit plans for the construction and installation of the septic system serving the structure to DES for approval.
3. RSA 485-A:38, I requires that prior to the expansion of any structure in a way that would increase the load on a septic system, the owner of the structure must submit an application for approval of a septic system capable of serving the expanded structure to DES. Env-Ws 1004.14 further clarifies this requirement.
4. Seymour Howes is the current owner of the Season's Pass Restaurant, located on Route 104 in New Hampton, more particularly described in Town of New Hampton tax maps as Map#U8, Lot #6-9 ("the Property").
5. On May 18, 1971, Arthur W. Ramage, on behalf of Henry Boilard, the then-owner of the Property, applied for approval for a septic system for the Property. The application stated that: "This is not a restaurant where meals are prepared. The only cooking would be on a grill, and served on paper plates; coffee in paper cups. Some tables inside and picnic tables outside."

6. The plan submitted with the application showed a roadside, self - service establishment, with paper containers.
7. Pursuant to the requirements then in place, the size of the septic system for a restaurant was based on the number of seats and whether the restaurant had eat-in service and/or paper service.
8. Based on the information provided in the application, DES issued Approval #15444. The approval was for a septic system to handle the wastewater generated by a small, self-serve hamburger stand, with no inside seating or dishwashing capacity.
9. On May 2, 2000, Seymour Howes applied to the New Hampshire Department of Health and Human Services Bureau of Food Protection ("DHHS") for a license for a 175-seat, full-service restaurant.
10. On May 18, 2000, DHHS issued a provisional license to Mr. Howes to operate the Season's Pass Restaurant. A condition of the license required Mr. Howes to obtain approval from DES for a septic system capable of handling the load from a 175-seat restaurant with full indoor table service.
11. On August 16, 2000, the provisional license issued to Mr. Howes expired. Because Mr. Howes failed to obtain septic system approval from DES for a 175-seat restaurant, DHHS denied Mr. Howes' application for a restaurant license.
12. By letter dated October 16, 2000, DES informed Mr. Howes that RSA 485-A:38 and Env-Ws 1004.14 required that prior to increasing the load on the septic system at the Property, Mr. Howes must apply for and receive approval for a septic system capable of handling the increased wastewater loading a 175-seat restaurant on the Property would generate.
13. On October 19, 2000, DHHS notified DES by e-mail that DHHS had denied Mr. Howes a restaurant license for the Property, and that Mr. Howes had notified DHHS that he intended to continue to operate the restaurant pending a hearing on his appeal of the DHHS denial of his application.
14. To date, Mr. Howes has failed to apply to DES for a new approval for an updated septic system on the Property.

D. DETERMINATION OF VIOLATIONS

1. Seymour Howes has violated RSA 485-A:29, RSA 485-A:38 and Env-Ws 1004.14 by expanding the use of the Property, resulting in an increase in the load on the septic system, without first obtaining approval from DES of a septic system capable of serving the expanded use.

E. ORDER

Based on the above findings, DES hereby orders Seymour Howe as follows:

- 1 Immediately cease operation of the Season's Pass Restaurant.
- 2 By May 15, 2001, submit an application for individual sewage disposal system approval to DES.
- 3 Upon receipt of construction approval from DES, install and receive operational approval for the new septic system by July 1, 2001.
- 4 Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Richard J. de Seve, Compliance Supervisor, Subsurface Systems Bureau
DES Water Division
6 Hazen Drive
Concord, NH 03301
Fax: (603) 271-6683
e-mail: rdeseve@des.state.nh.us


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Seymour Howes of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:43 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


COPY
Harry T. Stewart, P.E., Director
Water Division


COPY
Robert W. Varney, Commissioner

Certified Mail/RRR:

cc: ~~Gretchen Rule, DES Enforcement Coordinator~~
Public Information Officer, DES PIP Office
NH AGO
P. Raiche, DHHS Bureau of Food Protection
Board of Selectmen, Town of New Hampton
Health Officer, Town of New Hampton